

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 741 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

TARUNBHAI DHARSHIBHAI KARIA

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner

MR HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 30-1-98 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act") has challenged the legality and validity of the said order of his detention.

The detaining authority, after considering one prohibition case registered against the petitioner, which was at the investigation stage when the order of detention was passed and the statements of certain witnesses for the incidents which took place on 2-1-98 and 11-1-98, arrived at the subjective satisfaction that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order, the petitioner is required to be detained and has therefore passed the impugned order of detention.

As regards the incident of 2-1-98, the witness has alleged that he was beaten by the petitioner on the suspicion that he was the informant of the police whereas so far as the incident of 11-1-98 is concerned, the witness was beaten when the witness advised the petitioner not to unload and store the liquor near places like school and NID.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a boot-legger within the meaning of Section 2(d) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in *Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City*, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The

order of detention dated 30-12-1997 is quashed and set aside. The detenu Tarunbhai Dharshibhai Karia is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs. D.S.permitted.

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